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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/466,935	12/20/1999	VITALIY ARKADYEVICH LIVSHITS	0010-1070-0	1750

7590 03/27/2002

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EXAMINER

STEADMAN, DAVID J

ART UNIT PAPER NUMBER

1652

DATE MAILED: 03/27/2002

13

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/466,935

Applicant(s)

LIVSHITS ET AL.

Examiner

David J. Steadman

Art Unit

1652

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 February 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☒ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see attached.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 16 and 17.

Claim(s) objected to: NONE.

Claim(s) rejected: 11-15 and 18-21.

Claim(s) withdrawn from consideration: NONE.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

ADVISORY ACTION


1. Claims 11-21 are pending in the application.
2. Claims 11-15 and 18-21 are rejected.
3. Claims 16 and 17 are in condition for allowance.
4. The amendment has not been entered because said amendment introduces the limitation of modifying the bacterium to increase polypeptide activity by "enhancing the expression of a gene", thus changing the scope of the claim and requiring a new search and further consideration of the claims. Furthermore, the additional claims have been added without canceling an equal number of finally rejected claims. The request for reconsideration has been considered but does not place the case in condition for allowance for the reasons discussed below.
5. Rejection of claims 11-15 under 35 U.S.C. 112, second paragraph, is maintained. Applicants argue the claims have been amended to recite "modified to increase", which is relative to those bacteria that have not been modified to increase protein activity. However, in view of non-entry of the amendment, the rejection is maintained for the reasons discussed above and for the reasons of record.
6. The written description rejection of claims 11, 12, and 18-21 under 35 U.S.C. 112, first paragraph, is maintained. Applicants argue the claims are adequately supported by the instant specification by reciting a specific amino acid sequence whose activity increased. Applicants argue the specification fully describes the amino acid sequences of the encoded polypeptides, provides examples of DNA molecules encoding the polypeptides, and provides examples of methods for increasing/enhancing the activity of the polypeptides. However, in view of non-entry of the amendment, the rejection is maintained for the reasons discussed above and for the reasons of record.
7. The scope of enablement rejection of claims 11, 12, and 18-21 under 35 U.S.C. 112, first paragraph, is maintained. Applicants argue the specification is fully enabling because a skilled artisan could make and use a bacterium having increased polypeptide activity based on the teachings of the instant specification coupled with the common knowledge of a skilled artisan. Applicants argue that a skilled artisan could screen bacteria for resistance to L-homoserine and L-threonine to isolate bacteria

Art Unit: 1652

with increased activities of the polypeptides of SEQ ID NOs:2 and 4, respectively. Applicants argue that, contrary to the examiner's assertion, the specification is enabling for enhancing/increasing polypeptide activity by methods other than bacterial transformation such as increasing the gene copy number or by alteration of the promoter sequence of the encoding polynucleotide. However, in view of non-entry of the amendment, the rejection is maintained for the reasons discussed above and for the reasons of record.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Steadman, whose telephone number is (703) 308-3934. The examiner can normally be reached Monday-Friday from 8:00 am to 4:30 pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ponnathapura Achutamurthy, can be reached at (703) 308-3804. The FAX number for this Art Unit is (703) 308-4242. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Art Unit receptionist whose telephone number is (703) 308-0196.

David J. Steadman, Ph.D.


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